

**BEFORE THE  
IMPARTIAL HEARING OFFICER**

**STATE OF NEVADA**

In the Matter of

STUDENT<sup>1</sup>, by and through his  
Parents

Petitioners,

v.

WASHOE COUNTY SCHOOL  
DISTRICT

Respondent.

DECISION OF THE HEARING  
OFFICER

September 12, 2009

Representatives

Jeffrey Blanck, Attorney at Law  
for Petitioners

Paul Anderson, Attorney at Law  
for Washoe County School District

Hearing Officer

Gretchen Greiner, Ed.D.

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<sup>1</sup> Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

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2                                   **GENERAL FINDINGS OF FACT**

3

4     The Petitioner is a twelve-year-old boy who is eligible to attend junior high school  
5     in the Washoe County School District (District) in Nevada. The parties stipulate  
6     that the Petitioner and his parents (Parent or Parents) reside within the  
7     boundaries of the District and that the Petitioner is eligible for special education  
8     and related services under the Individuals with Disabilities Education Act (IDEA)  
9     (20 USC § 1400 et seq, 34 CFR Part 300) under the category of autism,  
10    specifically Asperger's Syndrome. This action arises under the IDEA and *Nevada*  
11    *Revised Statutes* (NRS) Chapter 388.

12

13    The request for impartial due process encompassed a single issue that is within  
14    the jurisdiction of this Hearing Officer. Specifically, the Petitioner disagrees with  
15    the District's proposed change in placement of the Petitioner from a private  
16    school, to Mendive Middle School, a public school within the District.

17

18    As resolution, the Petitioner is seeking an order that would require the District to  
19    continue to fund the Petitioner's placement at the private school, specifically by  
20    finding that the District's proposed placement is not appropriate for the Petitioner.  
21    In addition, the Petitioner asks for the following:

22

- 1        1.     That the District continue to cover all costs associated with the  
2                Petitioner's placement at The private school, including transportation:
- 3        2.     That the District cover fees for one activity per semester so that the  
4                Petitioner can have the opportunity to build confidence while at the  
5                same time being integrated with typically developing peers in a  
6                structured setting; and
- 7        3.     An order of the Hearing Officer declaring that the Petitioners are the  
8                prevailing parties in this case and are entitled to an award of  
9                reasonable attorneys' fees and costs.

10  
11    The Hearing Officer does not have jurisdiction to determine if the Parents are  
12    entitled to reimbursement for attorney's fees and costs, as well as all expert fees  
13    and costs related to the preparation and testimony in the hearing.

14  
15    Petitioners' request for a hearing was received by the District on June 18, 2009,  
16    with a decision due date of September 2, 2009. *Hearing Officer exhibit (HO)1*. A  
17    status conference was scheduled for July 6, 2009. *HO-2, HO-6*. During the  
18    status call, a pre-hearing conference was scheduled for July 27, 2009 and  
19    hearing dates were set in the event that continuing settlement attempts were  
20    unsuccessful. *HO-7*. During the status call, the parties requested an extension  
21    for the hearing and issuance of the decision to September 15, 2009.    The  
22    extension was necessitated due to scheduling conflicts with the participants in

1 the process and only granted when the Hearing Officer was assured that the  
2 Petitioner was not being harmed by the delays. Extending the original date by 12  
3 days did not significantly delay the Petitioner's entrance into public school, should  
4 that be determined to be the appropriate placement.

5  
6 The District filed a Motion to Dismiss the Petitioner's request for due process on  
7 July 1, 2009, stating that the parties had signed a Settlement Agreement on  
8 October 15, 2008 that returned the Petitioner to a District placement for the 2009-  
9 10 school year and that both state and applicable federal law made that  
10 Agreement binding on the parties. *HO-3*. A response schedule for briefing was  
11 established during the status call, and the Petitioner's Response was received on  
12 July 16, 2009. *HO-4*. The District's Response to that was received timely on  
13 July 22, 2009. *HO-5*, The Hearing Officer ruled on July 29, 2009 that the case  
14 would proceed to hearing, as the Petitioner had the right to challenge the  
15 placement the District offered for the 2009-10 school year. *HO-12*.

16  
17 Immediately following the pre-hearing call on July 27, 2009, the Petitioner  
18 requested clarification, both via email and by letter, of what issues would be  
19 heard at hearing, as he believed that FAPE was also an issue. *HO-9, HO-10*.  
20 The parties engaged in some discussion through email regarding this request,  
21 until the Hearing Officer responded by letter that she would review the request for  
22 due process and determine what issues were part of the original request. *HO-11*.

1 On July 28, 2009, the Hearing Officer issued a determination that the only issue  
2 for hearing was the issue of whether or not the District had offered the Petitioner  
3 an appropriate placement for the 2009-10 school year. *HO-13*.

4  
5 On August 5, 2009 the Hearing Officer issued an Order for Due Process. *HO-14*.

6  
7 The Petitioner requested to amend the original due process complaint on August  
8 13, 2009. *HO-15*. The District responded via email to this request on August 14,  
9 2009, opposing it, and there was some electronic discussion on that date  
10 between the parties regarding this, until the Hearing Officer responded that she  
11 would rule on the amendment request on August 17, 2009. *HO-16*. The Hearing  
12 Officer ruled that the amendment would not be allowed, citing closeness to the  
13 hearing date and the determination that there were no additional issues raised or  
14 relief requested in the request to amend. *HO-17*.

15  
16 Both parties submitted their witness lists as scheduled, on August 17, 2009. *HO-*  
17 *18, HO-19*. Disclosure of exhibits was achieved as scheduled on August 19,  
18 2009.

19  
20 The matter proceeded to hearing and was heard before Gretchen Greiner,  
21 Hearing Officer, on Wednesday, August 26, 2006 continuing and concluding on  
22 Thursday, August 27, 2009 at the District offices, 380 Edison, Reno, Nevada.

1 Petitioners (Petitioner and Parents) were represented by Mr. Jeffrey Blanck,  
2 Attorney at Law. The Parent was present during the entire hearing. Mr. Paul  
3 Anderson, Attorney at Law, represented respondent District. Present throughout  
4 the hearing with District's counsel was Shannon Ward, Special Education Area  
5 Administrator for the District.

6  
7 The witnesses, in order of appearance, were: **Parent** (Mother); **Administrator**  
8 (The private school Learning Center, hereinafter "private school"); **Placement**  
9 **Coordinator** (private school); **Teacher** (private school); **Assistant**  
10 **Superintendent** (District); Special Education **Area Administrator 1** (District);  
11 Special Education **Area Administrator 2** (District); **Principal** (District);  
12 **Asperger's Consultant** (District). Re-appearing as rebuttal witness was the  
13 **Parent** (Mother).

14  
15 At the beginning of the hearing, by stipulation of the parties, the parties' exhibits  
16 WCSD 1 through 101 and Petitioner 1 through 9 (including the table of  
17 contents/list of documents) were accepted as submitted into evidence. However,  
18 the Hearing Officer stated that exhibits submitted but not entered into the record  
19 through witness testimony would be returned to the parties. Returned to the  
20 Petitioner were his exhibits 1 through 3, as they were duplicative and not entered  
21 into the record through witness testimony. This was noted on the record, and the  
22 exhibits returned with the agreement of the Petitioner's Representative.

1 Following oral closing arguments, the evidentiary hearing was concluded on  
2 August 27, 2009, and the record was closed and the matter submitted for  
3 decision. During closing, the District once again raised the concern that the  
4 Settlement Agreement signed on October 15, 2008 was binding on all Parties  
5 and asked for a determination.

6  
7 It is necessary in this decision to speak to burden of proof. The Petitioner claims  
8 the District's proposed placement is not appropriate for him and specifically  
9 seeks a continuance of the private placement that he participated in at District  
10 expense during the 2008-09 school year. The burden of proof is rightfully on the  
11 Petitioner as he is the party seeking relief. *Schaffer v. Weast*, 44 IDELR 150  
12 (U.S. 2005)

13  
14  
15 **FINDINGS OF FACT**

16  
17 This Hearing Officer finds the following facts, based on exhibits and testimony  
18 presented by the Petitioner and the District, and all records of pre-hearing  
19 conferences and rulings, entered at the hearing as evidence:

20 1. Petitioner is a 12-year-old student diagnosed with Asperger's

21 Syndrome who will be attending the 7<sup>th</sup> grade in the 2009-10

22 school year. The Petitioner has been involved with the District

1 since he was 3 years old and attended District schools since he was  
2 in Kindergarten. While in first grade, the Petitioner was diagnosed  
3 by the District as having Asperger's Syndrome. *Testimony of*  
4 *Parent, Asperger's Consultant.*

- 5 2. The Petitioner has had problems in District educational settings in  
6 the past. The Petitioner exhibits several social behaviors that cause  
7 him to have problems with his peers – he monopolizes  
8 conversations (does not take turns), makes negative comments  
9 and facial expressions to his peers, talks with inappropriate tone,  
10 and has difficulty resolving personal conflict without physical  
11 contact or negative comments, cannot work consistently without  
12 creating verbal or physical disruptions for other students, ignoring  
13 negative behaviors from peers, blurts out, doesn't follow directions  
14 and makes sounds/gestures that are distracting to others.

15 *Testimony of Parent, Teacher, Asperger's Consultant, WCSD Exhibit*  
16 *1, Petitioner Exhibits 5, 6, 8.*

- 17 3. The Parent feels that the District has betrayed her trust in the past,  
18 and does not trust the District now to provide FAPE to her son.  
19 However, the Parent's goal is to return the Petitioner to the



1 District so that he can graduate with a regular diploma. *Testimony*  
2 *of Parent, Asperger's Consultant, Rebuttal Testimony of Parent.*

- 3 4. The Director has been employed by private school as an associate  
4 director of the organization and the principal of Pine Hills Schools in  
5 San Jose. He holds teaching credentials in regular education,  
6 special education and administration in California. He has been with  
7 the private school for 7 years. He is familiar with the personnel  
8 employed at the private school, the purpose of the private school  
9 programs and how the programs are implemented, specifically the  
10 private school program in Reno, Nevada. He is acquainted with the  
11 Petitioner and has observed in the classroom and in social settings.

12 *Testimony of Director.*

- 13 5. The private school Placement Coordinator works as a school  
14 psychologist in Santa Clara County, California. She has worked as a  
15 special education teacher, and is presently working on her  
16 doctorate. She is responsible for placing students into group  
17 homes and non-public schools. She has interacted with the private  
18 school in California many times and has placed students with either  
19 serious emotional disturbance (SED) or Asperger's Syndrome with  
20 them. She assists in transitioning students back into their school

1 districts, helping them understand the needs of the student they  
2 are transitioning. However, this witness has had no first hand  
3 experience with the Petitioner. She stated that if a school says  
4 they have a program for that student, she trusts that. *Testimony*  
5 *of Placement Coordinator.*

- 6 6. The Teacher is employed by the private school to provide the  
7 academic instruction at the program in Reno, Nevada. She has  
8 been employed by the private school for approximately seven  
9 years, opening the program in Reno, Nevada in September 2008.  
10 She was the Petitioner's teacher for the 2008-09 school year.

11 *Testimony of Director, Teacher.*

- 12 7. The Asperger's Consultant is a speech therapist who has been  
13 employed by the District for the past 11 years. For the last seven  
14 years, she has been the District consultant for children with  
15 Asperger's Syndrome. She has also worked extensively with  
16 patients with traumatic brain injury, the legislative autism grant and  
17 Willow Springs Treatment Center. She is skilled in teaching social  
18 language, has attended numerous workshops and trainings on  
19 Asperger's Syndrome, and is a nationally known presenter on the  
20 topic of working with children who have Asperger's. She has

1 worked with the Petitioner and his family for six years across  
2 various placements within the District. *Testimony of Asperger's*  
3 *Consultant.*

#### 4 5 **Settlement Agreement**

6  
7 8. The Petitioner's parents filed a due process complaint on August  
8 11, 2008 and an amended due process complaint was filed on  
9 August 20, 2008. In September 2008 the Petitioner was placed  
10 unilaterally at the private school by his parents. *Testimony of*  
11 *Parent, Teacher, Assistant Superintendent, Area Administrator 2,*  
12 *Asperger's Consultant, WCSD Exhibit 24.*

13 9. As the result of a settlement agreement signed by the parties on  
14 October 15, 2008, the Petitioner attended the private school for  
15 the 2008-09 school year, at District expense. The District, as part  
16 of the Settlement agreement, paid the Petitioner's tuition and  
17 transportation costs through June 12, 2009. *Testimony of Parent,*  
18 *Assistant Superintendent, Area Administrator 1, Area Administrator*  
19 *2, Asperger's Consultant, WCSD Exhibits 24, 25, 53, 54.*

20 10. The Asperger's Consultant advocated for the Petitioner to be  
21 placed at the private school for the 2008-09 school year. She felt

1 it was best for the Petitioner at that time. *Testimony of Parent,*  
2 *Assistant Superintendent, Area Administrator 2, Petitioner's Exhibit*  
3 *8.*

4 11.The Settlement Agreement stated that : "WCSD will not be  
5 responsible for the payment of any educational or related costs  
6 associated with [the Petitioner's] placement at the [private school]  
7 after June 12, 2009." *WCSD Exhibit 24, page 2, paragraph 4.*

8 Further , the Settlement Agreement resolved "all outstanding  
9 issues that exist between the Petitioners and the WCSD, pursuant  
10 to Petitioners' Amended Complaint for Due Process filed with the  
11 WCSD on or about August 30, 2009." *WCSD Exhibit 24.*

12 12.The Settlement Agreement stated that: "The Petitioners and the  
13 WCSD agree to work closely together during the 2008-09 school  
14 year to: (1) effectuate a successful transition of [the Petitioner]  
15 back to the WCSD Middle School environment for the 2009-10  
16 school year; and (2) develop an IEP (at least three months prior to  
17 the beginning of the 2009-10 school year) that is reasonably  
18 designed to provide FAPE for [the Petitioner] for the 2009-10  
19 school year." *WCSD Exhibit, page 2, paragraph 5, Testimony of*

*Parent, Assistant Superintendent, Area Administrator 1, Area Administrator 2, Asperger's Consultant, WCSD Exhibit 2.*

13. The District has met all of the terms of the Settlement Agreement.

The District paid for the Petitioner's placement at the private school and for his transportation costs, maintained communication with the Petitioner and his family, and developed an IEP for the Petitioner for the 2009-10 school year three months before the start of that school year. *Testimony of Parent, Assistant Superintendent, Area Administrator 1, Area Administrator 2, WCSD Exhibits 1, 2, 25 through 39, 41 through 46, 49, 50, 55 through 65, 68 through 76, 78 through 81, 85 through 88, 90 through 96, 98, Petitioner's Exhibit 4.*

### Appropriate Placement

14. In September 2008 the California program opened a new school in Reno, Nevada. The private school has two full-time staff for the program in Reno – a full-time teacher and a full-time teacher's assistant. The teacher handles all academic instruction while the teacher's assistant is responsible for the social thinking classes.

1 The program in Reno has 3 full-time students and one part-time  
2 student. *Testimony of Director, Teacher.*

3 15. When the Petitioner enrolled at the private school, he was the only  
4 student. As the year progressed, new students were added in  
5 October, January and February, until the enrollment was 3 full-time  
6 students and 1 part-time student. All of the students had  
7 Asperger's Syndrome. The full-time student and the part-time  
8 student were the same age as the Petitioner, with the third  
9 student being several years younger. *Testimony of Director,*  
10 *Teacher, Area Administrator 1, Autism Consultant, Petitioner*  
11 *Exhibit 6.*

12 16. The students at the private school participate in orchestrated  
13 activities throughout the school year that placed them in situations  
14 in the community where they had to demonstrate appropriate  
15 social behaviors. At times they interact with age appropriate  
16 typically developing peers from another, unaffiliated private school  
17 next the program. Staff members shadow the students so that  
18 they can be coached in appropriate social interactions. *Testimony*  
19 *of Parent, Teacher.*

1 17.The data collected at the private school showed that the  
2 Petitioner's social behaviors declined during the 2008-09 school  
3 year, although he made some academic progress in math. He  
4 continues to have issues with writing. As each new student was  
5 introduced into the class, the Petitioner's behavior deteriorated.

6 *Testimony of Parent, Teacher, WCSD Exhibit 40, Petitioner Exhibits*  
7 *6, 8.*

8 18.During the 2008-09 school year, the District developed and  
9 implemented a Social Resource Program (SRP) for students with  
10 Asperger's Syndrome at Dunn Elementary School. The program  
11 was geared toward meeting the social interaction needs of  
12 students with Asperger's. *Testimony of Assistant Superintendent,*  
13 *Area Administrator 1, Area Administrator 2, Asperger's Consultant,*  
14 *WCSD Exhibits 3, 4, 5, 6, 7, 8, 13, 15, 16, 17, 18.*

15 19.The District is implementing the SRP at Mendive Middle School for  
16 the 2009-10 school year. The teacher who implemented the Dunn  
17 SRP will be the teacher for the Mendive Middle School Program.  
18 She has been trained specifically in how to meet the needs of  
19 students with Asperger's and how to teach them social thinking.  
20 Enrollment in the SRP is four students, including the Petitioner.

1 There is a teacher's assistant who will follow the students into their  
2 general education exposures as required by their IEPs. The  
3 program will focus on social instruction, but also deal with  
4 academic areas if the IEP calls for it. *Testimony of Area  
5 Administrator 2, Principal, Asperger's Consultant, WCSD Exhibit 1.*

6 20. Mendive Middle School is the Petitioner's neighborhood school and  
7 currently houses several other unique special education programs,  
8 in addition to the general education program. The staff is very  
9 receptive to these students and the administration is very  
10 supportive of the programs and the students. The Principal  
11 requested the SRP program be located at there as she believes her  
12 school is the ideal location for it. Staff received training on May  
13 19, 2009 on how to use picture schedules, how to support  
14 students with Asperger's Syndrome, and how to de-escalate  
15 behaviors. *Testimony of Area Administrator 2, Principal,  
16 Asperger's Consultant, WCSD Exhibit 77.*

17 21. All of the incoming 7<sup>th</sup> grade students at Mendive Middle School will  
18 be transitioning from another school when they begin the 2009-10  
19 school year. *Testimony of Principal, Asperger's Consultant.*



1 22.Mendive assigns students and teachers to “teams” within the  
2 school to help insure success in the setting. There will be 3 teams  
3 for the incoming 7<sup>th</sup> graders. Teams are formed at the beginning of  
4 the year to help students build bonds among themselves and with  
5 staff. The purpose is to give them a sense of belonging and  
6 consistency, as the students will remain with their team through  
7 their time in Mendive. *Testimony of Principal, Asperger’s*  
8 *Consultant.*

9 23.The Principal at Mendive has been responsive to the Parent’s  
10 concerns regarding the placement of the Petitioner at Mendive.  
11 The Petitioner has had problems with specific students in the past,  
12 and Mendive has moved those students into teams other than the  
13 Petitioner’s, to the extent that those other students can be  
14 identified. When the Parent commented on problems he foresaw  
15 with the placement of the SRP classroom, the Principal  
16 acknowledged this by moving the classroom to a location with less  
17 traffic. *Testimony of Principal.*

18 24.The June 1, 2009 draft IEP and draft Behavior Plan were developed  
19 by District staff directly from the data and the recommendations  
20 made by the private school staff. The District proposed placement

1 at Mendive Middle School. The Parent disagreed with the proposed  
2 placement and attached a prepared typewritten statement to the  
3 IEP to that effect. The Parent expressed concern over the lack of a  
4 transition plan for the Petitioner. The Parent agrees with the goals  
5 and objectives of the IEP, and with the proposed related services.  
6 She does not agree with the placement, as she does not agree with  
7 the goal that the Petitioner will spend up to 66 percent of his day  
8 in general education classes. *Testimony of Parent, Teacher, Area*  
9 *Administrator 2, Principal, Asperger's Consultant, WCSD Exhibit 1,*  
10 *2.*

11 25.The parties met again to discuss the addition of a transition plan to  
12 the IEP on July 21, 2009. The Parent again did not agree with  
13 the Proposed placement. Mendive Middle School proposed several  
14 different options for transitioning the Petitioner into general  
15 education classes so that the Petitioner can reach the goal of  
16 spending 66 percent of his day in general education. *Testimony of*  
17 *Parent, Teacher, Area Administrator 1, Area Administrator 2,*  
18 *Principal, Asperger's Consultant, WCSD Exhibit 1.*

19 26.The July 21, 2009 IEP includes the Petitioner's present levels of  
20 performance supplied by the private school. From those levels of

1 performance, the measurable annual goals were established for the  
2 Petitioner in writing, math, behavior in class, communication and  
3 socialization with peers. The instruction for math, social skills and  
4 organization for school materials will be given in the special  
5 education setting, with 66 percent of the Petitioner's day spent in  
6 the general education environment. The transition option plan is  
7 included, with a projected duration of three months, 6 hours a day.  
8 The Petitioner's IEP calls for the following in related services:  
9 counseling, occupational therapy, speech/language therapy,  
10 transportation, assistive technology, psychological services, and  
11 the Asperger's Consultant. The Petitioner will receive  
12 accommodations on the Nevada Proficiency Examinations and also  
13 within the school setting to assist him in the general education  
14 environment. In addition to the IEP, there is a Behavior Plan that  
15 identifies the targeted behaviors, the antecedents of those  
16 behaviors, intervention steps and positive reinforcements. There is  
17 also an Escape/Crisis Plan to be used in the event that the  
18 Petitioner is not able to de-escalate his behaviors with the Behavior  
19 Plan. Also attached is the memorandum from the Parent originally  
20 submitted on June 1, 2009, that states that the Parent feels the

1 Mendive placement is too over-stimulating for the Petitioner and  
2 asks for continued placement at the private school for that reason  
3 and the “past program failures” of the District. *WCSD Exhibit 1,*  
4 *77, Petitioner Exhibits 5, 8.*

5 27.The transition plan in the July 21, 2009 IEP encompasses three  
6 options that will allow the Petitioner to move into the general  
7 education environment at his own pace with support from the  
8 teacher and the teacher’s assistant in the SRP. The principal  
9 described the plan as very fluid, and that they will implement one  
10 or all of the options to see that the Petitioner is successfully  
11 transitioned. *Testimony of Principal, WCSD Exhibit 1.*

12 28.The Asperger’s Consultant is now advocating for the Petitioner to  
13 be placed in the District program, as in her opinion the District can  
14 meet the Petitioner’s unique needs through the IEP and proposed  
15 placement. She feels the District’s proposed placement is superior  
16 to what the private school can offer. Both placements could meet  
17 his academic and social thinking skills training needs but she  
18 believes that another year in the private school, without the  
19 opportunities for social interaction that being at Mendive would  
20 provide, would make it that much harder for the Petitioner to

1 transition back into the District. The Petitioner regressed in social  
2 skills throughout the school year, as shown by the private school's  
3 data. *Testimony of Asperger's Consultant, WCSD Exhibit 40,*  
4 *Petitioner Exhibit 8.*

## 5 6 **CONCLUSIONS OF LAW**

7  
8 It should be noted for the record that there were two outside witnesses, the  
9 Director and the Placement Coordinator, who testified regarding the private  
10 school program and the need for an appropriate program in the District for the  
11 Petitioner to transition into. Each was well qualified to venture an opinion  
12 regarding the private school program in California and the general needs of  
13 students with Asperger's Syndrome, but neither had any direct experience with  
14 the Petitioner, aside from some observation. The opinions of those professionals  
15 who had spent more time involved with the Petitioner, specifically the Teacher  
16 and the Asperger's Consultant, were given more weight. The Teacher had  
17 worked with the Petitioner for one school year, and her testimony was informative  
18 regarding the Petitioner's educational performance and behavior during that time.  
19 The Asperger's Consultant had worked with the Petitioner and his family for six  
20 years, across a variety of placements, including the private school, and was able  
21 to provide a broad perspective regarding the Petitioner's needs and past

1 educational experiences and, therefore, her testimony was given significant  
2 weight.

3  
4 **In the matter of whether the Settlement Agreement is binding on the**  
5 **Petitioner;**

6  
7 On October 15, 2008, the Petitioners and the District voluntarily entered into a  
8 Settlement Agreement wherein the parties agreed that the Petitioner would  
9 transition back to the District middle school environment for the 2009-10 school  
10 year and that they would develop an IEP at least three months prior to the  
11 beginning of the 2009-10 school year that was reasonably designed to provide  
12 FAPE to the Petitioner for the 2009-10 school year. The Agreement specifically  
13 states:

14           “The Petitioners and the WCSD agree to work closely together  
15 during the 2008-09 school year to: (1) effectuate a successful transition of  
16 [the Petitioner] back to the WCSD Middle School environment for the  
17 2009-10 school year; and (2) develop an IEP (at least three months prior  
18 to the beginning of the 2009-10 school year) that is reasonable designed  
19 to provide FAPE for [the Petitioner] for the 2009-10 school year. “ *WCSD*  
20 *Exhibit 24, page 2, paragraph 5*

21  
22 The Settlement Agreement also states:

23  
24           “WCSD will not be responsible for the payment of any educational  
25 or related costs associated with [the Petitioner]’s placement at the private  
26 school Learning Center after June 12, 2009.” *WCSD Exhibit 24, page 2,*  
27 *paragraph 4*  
28

1 IDEA requires that once resolution has been reached, that the parties shall  
2 execute a legally binding agreement that is signed by both the parent and a  
3 representative of the agency who has the authority to bind that agency and that  
4 the agreement is enforceable in any State Court of competent jurisdiction or in a  
5 district court of the United States. 34 CFR 300.510

6  
7 The Settlement Agreement, signed and executed between the parties on October  
8 15, 2008, binds both parties to the terms contained therein. The District carried  
9 out the terms are required in the Settlement Agreement, up to and including  
10 meeting with the parents to develop an IEP for the Petitioner three months prior  
11 to the beginning of the 2009-10 school year. The District has proceeded  
12 consistent with the Settlement Agreement that the Petitioner would be returning  
13 to the District at the start of the 2009-10 school year.

14  
15 The question is not whether the Petitioner would return to the District. The  
16 Settlement Agreement is a legal document, enforceable in by a court in the state  
17 of Nevada, where it was executed. The Petitioner is bound by the terms of the  
18 agreement to return to the District, as agreed by both the Petitioner's parents and  
19 the District. Neither party has the ability to void the agreement because the  
20 terms are not longer palatable. *D.R. v. East Brunswick Board of Education* 109  
21 F.3 896, 25 IDELR 734 (3 Cir. 1997) The Hearing Officer cannot enforce the  
22 Settlement Agreement, but the federal courts have consistently ruled that a

1 Hearing Officer must take into consideration any settlement agreement that is  
2 relevant to the special education issue before that Hearing Officer. *H.C. v.*  
3 *Colton-Pierrepoint Cent. School Dist.*, 2009 WL 2144016 (2<sup>nd</sup> Cir. 2009); *J.P. v.*  
4 *Cherokee County Bd. Of Educ.* 218 Fed Appx. 911 (11<sup>th</sup> Cir. 2007); *Hayden C.*  
5 *ex rel. Tracy C. V Western Placer Unified School Dist.*, 2009 WL 1325945 (E.D.  
6 Cal. 2009); *Mr. J. v. West Hartford Board of Education* 32 IDELR 202 (United  
7 States District Court, Connecticut 2000); *School Board of Lee County v. M.C.*,  
8 Florida District Court of Appeal, 2<sup>nd</sup> District 2001; *Linda P. V. State of Hawaii,*  
9 *Department of Education* 46 IDELR 73 (United States District Court, Hawaii  
10 2006).

11  
12 The challenge that lies before this Hearing Officer then is to determine whether or  
13 not the placement that the District has proposed for the Petitioner is appropriate.  
14 The Petitioner is bound by the terms of the Settlement Agreement to return to the  
15 District for the 2009-10 school year.

16  
17 **In the matter of whether the District's proposed placement is appropriate**  
18 **for the Petitioner;**

19  
20 The sole issue before the Hearing Officer is whether or not the placement  
21 proposed by the District for the Petitioner's 2009-10 school year is  
22 appropriate. Although a great deal of information was gathered during



1 the hearing about the Petitioner and his past performance, both in District  
2 schools and in the private school, and what the Parent did or did not like  
3 about the IEP, neither prior placements in the District nor the  
4 appropriateness of the private school are before this Hearing Officer.  
5 Therefore, the evidence pertaining to prior placements and the private  
6 school is relied upon solely as it relates to the determination whether the  
7 current District proposed placement is appropriate for the Petitioner.  
8 Further, it must be noted that the content of the IEP was not in question,  
9 only the placement. To that end, it is only necessary for the Hearing  
10 Officer to determine if the July 21, 2009 IEP can be implemented in the  
11 placement proposed by the District.

12  
13 IDEA states that to the maximum extent appropriate, children with disabilities are  
14 to be educated with children who are non-disabled, or least restrictive  
15 environment (LRE), and that removal of children with disabilities from the regular  
16 educational environment can occur only if the nature or severity of the disability  
17 is such that education in general education classes with the use of  
18 supplementary aids and services cannot be satisfactorily achieved. 34 CFR  
19 300.114 (a). This is a statement strongly in favor of inclusion but is not a  
20 mandate. The IDEA also recognizes that many children with disabilities will  
21 require settings other than the regular education environment in which to learn,

1 so there is a requirement that districts offer a continuum of placements to be  
2 available for those students. 34 CFR 300.115 (a).

3  
4 Placement is determined by the IEP/Placement team, which includes the Parent.  
5 Pursuant to 34 CFR 300.116, in determining the educational placement of a child  
6 with a disability, the placement decision must be made in conformity with the  
7 LRE; be based on the child's IEP; and be, as close as possible to the child's  
8 Home. Further, unless the IEP of a child with a disability requires some other  
9 arrangement, the child must be educated in the school that he would attend if  
10 non-disabled and in the selecting the LRE, consideration must be given to any  
11 potential harmful effect on the child or on the quality of services that he needs.  
12 When an IEP/Placement team is determining the appropriateness of inclusion,  
13 they must consider both the academic as well as the non-academic benefits to  
14 the child with disabilities. *Sacramento City Sch. Dist. Board of Educ. V. Holland*,  
15 20 IDELR 812, 14 F 3d 1398 (9<sup>th</sup> Cir. 1994). IDEA requires that the IEP team not  
16 remove the child from age-appropriate regular classrooms solely because of  
17 needed modifications to the general education curriculum. 34 CFR 300.116 (e).  
18 It is widely accepted that the less a placement resembles the general education  
19 classroom, the more restrictive it is considered to be.

20  
21 The District's proposed placement would be located at Mendive Middle school,  
22 the school that the Petitioner would attend if he were not disabled. More simply

1 put, Mendive is the Petitioner's neighborhood school, meeting one requirement  
2 for LRE. The resources necessary to implement the IEP, such as the specially  
3 designed instruction, related services, supplemental aides and services required  
4 in the IEP, are available to the Petitioner at Mendive Middle School. This would  
5 offer the Petitioner opportunities, in class and out, to interact with his typically  
6 developing peers in an inclusive setting. The District's proposed placement for  
7 the Petitioner is the LRE.

8  
9 Even though the LRE requirement strongly favors inclusion, it does not  
10 supersede the mandate that a child receive an appropriate education. *Wilson v.*  
11 *Marana Unified Sch. Dist. No. 6*, 735 F.2d 1178; 1984 - 1985 EHLR 556:101 (9th  
12 Cir. 1984). If an inclusive placement does not provide the child with a meaningful  
13 educational benefit, and a more restrictive placement will likely provide such  
14 benefit, then the child is entitled to be placed in that more restrictive placement.  
15 *Hendrick Hudson District Board of Education v. Rowley* (458 U.S. 176;  
16 1981-82 EHLR 553:656 (U.S. 1982).

17  
18 Based on the IEP, the proposed placement provides the Petitioner with  
19 educational benefit. Consistent with the IEP, the Social Response Program  
20 (SRP), implemented in the District's proposed placement, will address the  
21 Petitioner's identified need for specialized instruction the Petitioner  
22 requires in math, writing and social thinking. The IEP contains three

1 options for transitioning the Petitioner back into the general education  
2 environment and away from more restrictive environments. The  
3 placement is designed to implement the alternative provisions for  
4 transition with the supports and services required in the IEP. Once fully  
5 implemented the Petitioner will be able to participate for 66 percent of  
6 his school day with his typically developing peers with adult assistance.  
7 The placement is welcoming to students with special needs of all kinds, as  
8 evidenced by the number of special programs located at Mendive Middle  
9 School. The school staff has received training to assist them in dealing  
10 effectively with students who have Asperger's Syndrome. The school  
11 has been responsive to the Petitioner's unique needs already.

12  
13 All 7<sup>th</sup> grade students are transitioning from elementary school to middle  
14 school, from smaller elementary schools into the larger middle school. As  
15 a 7<sup>th</sup> grade student, the Petitioner would be among his typically  
16 developing peers who would all be dealing with the change from one  
17 campus to another. One reason for placing students with disabilities with  
18 their typically developing peers is so that they can share experiences that  
19 are normal for their age and grade. The transition into middle school is  
20 one such experience. The team building described by the Principal is

1 another non – academic venue that the Petitioner will benefit from, as he  
2 will interact with these students throughout his tenure at Mendive.

3  
4 The Petitioner does have some behaviors that can be disruptive in class,  
5 and the Petitioner has exhibited these behaviors across all educational  
6 settings. Consistent with the IEP, the Petitioner will have adult assistance  
7 as he requires it in the middle school, who can cue him to utilize his social  
8 thinking skills and he will continue to receive instruction in social thinking,  
9 so that he can practice his social behaviors in the school setting daily.

10  
11 The Parent clearly prefers the private school. She wants the Petitioner to  
12 return to the District for his high school diploma, once he has control of  
13 his behavior. She does not trust the District at this time. The Parent  
14 trusts the private school staff and feels that it is the best environment  
15 for the Petitioner. However, the Settlement Agreement resolved the  
16 issues leading up to the Petitioner’s placement at the private school, in  
17 essence allowing the parties to start the 2009-10 school year with a  
18 “clean slate”.

1 There is no mandate to provide the “best” or “most” appropriate  
2 placement for a child with disabilities. *Rowley* determined that school  
3 districts are required to provide a “basic floor of opportunity” in a  
4 program “individually designed to provide educational benefit to the  
5 handicapped child”. Just because the Parent prefers a placement that  
6 she feels is better, it does not mean that the placement proposed by the  
7 District is inappropriate. *Gregory K. v. Longview School District*, 811 F.2d  
8 1307:1986 – 87 EHLR 558:284 (9<sup>th</sup> Cir. 1987).

9  
10 In this case, the Petitioner did not carry the burden of proof. There was  
11 no evidence that the District could not or would not implement the IEP in  
12 the proposed placement for the 2009-10 school year. Although she  
13 called the middle school environment over-stimulating, the Parent was  
14 not able to show that the District would be unable to implement the IEP  
15 within that environment. The Parent’s strong preference for the private  
16 school, while heartfelt, is a consideration but not the sole factor in making  
17 a placement determination. While the District may consider the Parent’s  
18 preference in making a placement decision, IDEA would not permit the  
19 placement decision to be based solely on the parental preference. 17  
20 EHLR 834 (OSEP 1991). Her distrust of the District is acknowledged, but

1 does not advance her case that the District's proposed placement is not  
2 appropriate for the Petitioner. Indeed, the Parent agrees with most of the  
3 IEP, feels that the District people are nice and that it is a good program –  
4 just not for the Petitioner.

5  
6 The Petitioner emerged at the end of his placement at the private school  
7 during the 2008-09 school year with some improvement in math and  
8 writing skills, but with no improvement in social behaviors. He requires  
9 frequent daily opportunities to interact with his same age peers and to  
10 learn from those interactions. The placement at Mendive Middle School  
11 provides him with these opportunities.

12  
13 Since the IEP is not in question, and the District has demonstrated  
14 through evidence and testimony that they can implement the IEP at the  
15 proposed placement for the 2009-10 school year, it is determined that  
16 the Petitioner's appropriate placement for the implementation of the  
17 proposed July 21, 2009 IEP is Mendive Middle School, in the Social  
18 Response Program.

19  
20  
21 HELD: For the District

1

2 **ORDER**

3

4 The appropriate placement for the Petitioner for the 2009-10 school year is the  
5 Social Response Program located at Mendive Middle School, as proposed by the  
6 District on July 21, 2009.

7

8 IT IS SO ORDERED.

9

10 This 12<sup>th</sup> day of September, 2009.

11

12 

13

14 

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Gretchen Greiner, Ed. D.

15 Hearing Officer

16

17 **NAC 388.315. A party may appeal from the decision of a hearing officer made**  
18 **pursuant to NAC 388.310 within 30 days after receiving the decision. A party to**  
19 **the hearing may file a cross appeal within 10 days after he receives notice of**  
20 **the initial appeal. If there is an appeal, a state review officer appointed by the**  
21 **superintendent...shall conduct an impartial review of the hearing.**

22